

EXHIBIT 59

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

DEXIA SA/NV, et al.,

Plaintiffs,

vs.

BEAR STEARNS AND CO., INC., et al.,

Defendants.

-----x

C O N F I D E N T I A L

DEPOSITION OF MICHAEL B. NIERENBERG

New York, New York

Tuesday, January 15, 2013

Reported by: David Henry

JOB NO. 57338

1 Nierenberg - CONFIDENTIAL
2 instruction from your lawyer to not answer
3 on the basis of privilege, if you
4 understand the question you are supposed to
5 just go ahead and answer it, okay?

6 A. Yes.

7 Q. You were co-head of mortgage
8 trading at Bear Stearns along with Jeffrey
9 Verschleiser, right?

10 A. Yes.

11 Q. When was the last time you spoke
12 with Mr. Verschleiser?

13 A. Last week.

14 Q. When last week did you speak with
15 him?

16 A. I actually received an e-mail
17 from him.

18 Q. What was the e-mail about?

19 A. APAC.

20 Q. APAC?

21 A. Yes.

22 Q. He is involved in APAC?

23 A. Yes, he is.

24 Q. Were you involved in APAC?

25 A. I have a meeting set up to meet

1 Nierenberg - CONFIDENTIAL

2 look at the whole thing.

3 Q. But I guess your point is that
4 today volumes of RMBS issuance is
5 significantly down?

6 A. Yes.

7 Q. So let's focus now on Bear
8 Stearns mortgage securitization business,
9 and I'll generally be focused on RMBS. If
10 you ever feel the need to distinguish types
11 of mortgages or anything like that, just
12 let me know.

13 A. Sure.

14 Q. I'm just going to speak about
15 RMBS, okay? Can you just explain to me the
16 different ways that Bear Stearns made money
17 through the origination of mortgages
18 through the securitizing and issuing
19 mortgage-backed securities?

20 A. Sure. Well, there is a number of
21 different ways. One is we used to buy
22 mortgage loans in bulk from different
23 mortgage originators, so we would buy them
24 and there is two ways to distribute them.
25 One is you could do a securitization where

1 Nierenberg - CONFIDENTIAL

2 conduit? What generally are you referring
3 to?

4 A. The conduit to me I think about
5 more as a flow seller and then I think
6 about bulk seller as a bulk seller.

7 Q. Okay, we got a bit diverted. We
8 were talking about there was some business
9 that Bear had in actually originating the
10 mortgages, that's the Bear Res made some
11 money off of originating mortgages, right?

12 A. That was the intent.

13 Q. That was the intent. Why don't
14 you go through the other ways that Bear
15 made money through the mortgage, or the
16 process of originating mortgages through
17 structuring a security structure,
18 securitizing it and issuing securities.

19 A. Sure. So to keep it simple,
20 you'd go out and originate or buy a package
21 of loans let's say at a dollar. You then
22 take that package of loans and you'd cut it
23 up into different tranches and the hope was
24 that the sum was greater than the -- the
25 sum of the parts was greater than the whole

1 Nierenberg - CONFIDENTIAL

2 and that would be the so-called arbitrage.

3 So if you bought something at a dollar and

4 you sold it at a dollar and a quarter,

5 that's how we made our profit.

6 Q. And were there specific types of

7 fees or margins that you got to create that

8 hopeful quarter of profit or whatever the

9 profit was? In other words you'd have

10 different types of fees, structuring fees,

11 origination fees, underwriting fees, things

12 like that?

13 A. When you buy -- for example when

14 you buy in bulk, again using that example,

15 you buy for a dollar, there is no

16 necessarily -- there wasn't a structuring

17 fee or an origination fee. You'd buy it at

18 a dollar, we'd package it and then we'd

19 distribute it to the marketplace and

20 hopefully we'd get more than we paid for

21 it. So that's the whole premise around

22 buying the loans, whether it be in bulk or

23 in the conduit, and then once you

24 securitize them or sell them as loans

25 because you could do that too, hopefully

1 Nierenberg - CONFIDENTIAL

2 your margin where you sell it is above

3 where you had originated.

4 Q. And you made a comment about

5 Bear's effort to originate mortgages. I

6 just want to ask you, is it fair to say

7 that the vast majority of the money that

8 Bear made in the 2005 to 2007 period in the

9 mortgage business came through the

10 securitization of mortgages?

11 A. I don't know that that's the case

12 because there are many other parts of the

13 mortgage business, we had a commercial --

14 we had commercial mortgage securities on

15 one side, we had agency mortgage businesses

16 where you bought and sold Fannie Mae,

17 Freddie Mac and Ginnie Mae securities, so

18 I'm not sure the exact breakout of where

19 our profitability came from.

20 Q. Did you also trade certificates

21 at RMBS? In other words besides actually

22 issuing the securities you also --

23 A. Yes, we traded secondary mortgage

24 securities.

25 Q. You also made money through

1 Nierenberg - CONFIDENTIAL

2 would drive the margins up, right?

3 A. Sure.

4 Q. So and the point being it wasn't

5 a situation where you could just say we're

6 going to demand a double the price that the

7 other market players are demanding, right?

8 A. No.

9 Q. So then am I correct that because

10 the market dictated pricing the principal

11 way for you to make more money for Bear

12 Stearns in the RMBS securitization business

13 was to increase the volume of issuance,

14 right?

15 A. Only to the extent it was

16 profitable, right? So if there was no

17 profit margin in buying that package of

18 loans and doing a securitization, we

19 wouldn't obviously go out and try to buy

20 more.

21 Q. And during the I guess 04 to 07

22 period it was profitable, right?

23 A. Most of the time.

24 Q. Far more profitable to issue RMBS

25 during that time period than it is today,

1 Nierenberg - CONFIDENTIAL

2 right?

3 A. I don't know that that's the
4 case.

5 Q. Well, the market has simply
6 changed today from what it was back then?

7 A. The market has changed. There is
8 still profit margins today.

9 Q. So then let me clarify. The size
10 of the market in 04 to 07 was much larger
11 than it is today as far as issuing RMBS?

12 A. On the residential side, yes.

13 Q. Let's talk about your
14 compensation a little bit and get that out
15 of the way.

16 A. That's okay.

17 Q. From -- as best you recall, can
18 you just tell me what you are compensated
19 from Bear from 2002 to 2008? And if you
20 can, break out -- well, let me make it a
21 little easier. The base salary was
22 relatively constant during that time
23 period, right?

24 A. I believe so.

25 Q. Okay, did you have a fixed base

1 Nierenberg - CONFIDENTIAL
2 based on who the issuer of the security is?

3 A. I think if we acted as an
4 underwriter the process is -- I don't know
5 what the exact process was, but typically
6 when you're acting as an underwriter you're
7 getting paid a fee by an issuer to go out
8 and sell securities into the marketplace on
9 behalf of that client.

10 Q. You make money a different way
11 when you are just the underwriter?

12 A. Correct. It would typically be
13 more fee based than it would be spread
14 based.

15 Q. But in terms of the work that you
16 did from the time that -- let me put it
17 this way.

18 Whether you were acting as
19 underwriter or as issuer Bear did basically
20 the same work in terms of structuring the
21 security, right?

22 A. Not necessarily. Sometimes an
23 issuer would tell you this is the kind of
24 structure that they would want to use and
25 this is the way that they envisioned it

1 Nierenberg - CONFIDENTIAL

2 A. Yes.

3 Q. Bear -- in general is it fair to
4 say that Bear was not in the business of
5 holding individual, you know, mortgages on
6 its balance sheet, right?

7 A. Is there a period of time
8 associated with that?

9 Q. Fair enough. Unless I give you a
10 different time we could talk about the 05
11 to 07 period. Up until the time that you
12 left to go do the commodities and
13 currencies. So during that 05 to 07
14 period, is it fair to say that Bear
15 acquired individual mortgages with the
16 strategy of making money by selling those
17 mortgages either in securitizations or
18 whole loan sales, right?

19 A. Yes.

20 Q. And to the extent that individual
21 mortgage loans were not securitized but
22 were in Bear's inventory, that left Bear at
23 the risk of loss if there was a default on
24 the mortgage, right?

25 A. Yes.

1 Nierenberg - CONFIDENTIAL

2 carry. So his point was, I'm speculating
3 again, is we're not going to use the firm's
4 balance sheet just to sit with positions
5 when we need to turn them over and sell
6 them.

7 Q. The firm wasn't looking to be an
8 investor in RMBS certificates, right?

9 A. Well, reading the e-mail it's
10 like we're in the moving business, there
11 were times that we would make strategic
12 plays to hold on to certain things.

13 Q. But we're in the moving business,
14 not storing. You don't take long-term
15 positions in RMBS.

16 A. For the most part, no.

17 Q. Okay. And then in the end of the
18 last paragraph he writes as I finalize each
19 desk your age book will appear next to your
20 bonus pool when I meet with Mayer and
21 Overlander. Do you see that?

22 A. Yes.

23 Q. who are Mayer and Overlander?

24 A. They coheaded fixed income, Jeff
25 Mayer and Craig Overlander.

1 Nierenberg - CONFIDENTIAL

2 Q. Do you know who Jo Karen Whitlock
3 is?

4 A. I know her and I remember her.

5 Q. Who is she?

6 A. She worked at EMC.

7 Q. In Texas?

8 A. In Texas.

9 Q. You smiled when you said you
10 remember her.

11 A. I remember her, but I forgot
12 exactly what her role was.

13 (Exhibit 326, JPMC DEX
14 8889342-596, marked for
15 identification.)

16 Q. I've got a document I'm marking
17 as Exhibit 326. I'm again just asking you
18 about the e-mail. Have you seen this
19 document before?

20 A. Not that I am aware of.

21 Q. There will be some documents that
22 your name doesn't appear, I'm just going to
23 ask you to explain, you know, translate for
24 me. I'm a lawyer, not a banker. So there
25 is first an e-mail from Frank Waylang to

1 Nierenberg - CONFIDENTIAL

2 speculating. If in fact our volumes were
3 dropping, I think again speculating, I
4 think Mary wants to know why were our
5 volumes dropping.

6 (Exhibit 327, JPMC DEX
7 9268572-825, marked for
8 identification.)

9 Q. This is 327. You see this is a
10 February 2nd e-mail from Jo Karen to Steve
11 Kelly forwarding an e-mail that she got
12 from Mary Haggerty. Do you see that?

13 A. Yes.

14 Q. And then again in the first
15 e-mail from Frank, he writes conduit
16 purchase 499 loans totalling almost 78
17 million today, do you see that?

18 A. Yes.

19 Q. So you see Mary Haggerty asked Jo
20 Karen, hi Jo, why so few loans?

21 A. Yes.

22 Q. Now, Jo Karen writes to Steve
23 Kelly, so do you know who Steve Kelly is?

24 A. I don't.

25 Q. Jo Karen writes to Steve Kelly,

1 Nierenberg - CONFIDENTIAL

2 diligence they did, I don't know.

3 Q. What is the purpose of the
4 diligence?

5 A. Ensuring that the data and the
6 way the loan was represented is correct.

7 Q. Why is that important?

8 A. So you understand what you're
9 buying.

10 Q. Okay. And are there certain
11 problems you face if the data that's
12 represented to investors and securities is
13 not correct?

14 A. Certain problems if the data that
15 was represented --

16 Q. Well, you said data. When you
17 say ensuring that the data and the way the
18 loan was represented is correct, let me
19 step back, that was your answer. So
20 represented to whom?

21 A. To us, the purchaser.

22 Q. Okay.

23 A. So just to clarify, if in fact we
24 thought we were buying a pool of mortgage
25 loans and for example the borrower said he

1 Nierenberg - CONFIDENTIAL
2 was an EDLTV or the seller to us said it
3 was an EDLTV, you'd want to ensure it was
4 an EDLTV, or if the type of loan had
5 certain deposits in their bank account
6 you'd want to ensure that.

7 Q. And that's because -- the
8 diligence gave you comfort that the loans
9 were more likely than not to perform within
10 expectations based on the representations
11 made about what's in the loans, right?

12 A. Yes. You always made -- if you
13 buy a loan you are always going to make
14 certain assumptions about losses. So if
15 for example we're buying a loan from
16 company A, you want to look at that loan
17 based on what you think your assumptions
18 were to make sure that the loan that
19 they're selling to you is that loan.

20 Q. Right, because the assumptions
21 about losses that you make are driven by
22 certain --

23 A. LTV and income, et cetera.

24 Q. And so if the diligence that you
25 performed is reliable, then that will give

1 Nierenberg - CONFIDENTIAL

2 you more comfort that the loans will
3 perform consistent with the assumptions you
4 make based on the characteristics of the
5 loan?

6 A. At the time you purchase them,
7 yes.

8 Q. And if the diligence that you
9 perform is not reliable, then that will
10 increase the likelihood that the loans
11 performed in some way that's inconsistent
12 with the assumptions you draw based on the
13 way the loan is represented, right?

14 A. Yeah, you just don't know what
15 the loan is then.

16 Q. So you did diligence when you
17 were buying loans, right? When Bear was
18 acquiring loans either in bulk or through
19 the flow conduit?

20 A. To the best of my knowledge, yes.

21 Q. If Bear was acting as an
22 underwriter for an RMBS offering did it
23 also do diligence on the loans?

24 A. I believe so, yes.

25 Q. What is the purpose of doing

1 Nierenberg - CONFIDENTIAL

2 represents 0.04 percent, do you see that?

3 A. Yes.

4 Q. And just as co-head of the
5 mortgage business, do you have any
6 understanding why Bear would perform its QC
7 process on only 13 out of over 36 thousand
8 loans it acquired from Countrywide?

9 A. No, none. I don't know.

10 Q. Okay. I may have asked you this,
11 but are you aware of any difference between
12 the diligence that Bear performed on
13 mortgages when it served solely as
14 underwriter versus the diligence it did
15 when it was sponsor?

16 A. No, I'm not aware.

17 Q. Are you aware whether there were
18 certain sellers of mortgages that Bear for
19 its own internal acquisition purposes had
20 suspended?

21 A. I believe we did, but I'm not
22 sure who they were or when we did that.

23 Q. Okay. I can show you documents
24 but let's see if maybe I can get your
25 memory. Do you remember if the Fremont

1 Nierenberg - CONFIDENTIAL

2 document?

3 A. I really didn't look at these
4 kind of documents.

5 Q. Okay. So I mean, you ran the
6 business based on your understanding of
7 just the economics of the deal. You didn't
8 really read the contract itself, is that
9 it?

10 A. Yes.

11 Q. Okay. So I just want to ask you
12 probably just one or two questions about
13 this. Just turn to section 4B, page 5 of
14 the document. You see it says pursuant to
15 various conveyancing documents to be
16 executed on the closing date and pursuant
17 to the pooling and servicing agreement the
18 purchaser will assign on the closing date
19 all of its right, title and interest in and
20 to the mortgage loans to the trustee for
21 the benefit of the certificate holders, do
22 you see that?

23 A. Yes.

24 Q. And that's consistent with your
25 understanding that every right that EMC had

1 Nierenberg - CONFIDENTIAL

2 in and to the mortgages was being

3 transferred to the trust.

4 A. Yes.

5 Q. And it was being transferred for

6 the benefit of the certificate holders,

7 right?

8 A. That's the way I read it.

9 Q. And now SAMI played the role as
10 purchaser of mortgages and also as the
11 depositor of the mortgages conveying them
12 to the trust, right? Is that how it
13 worked?

14 A. I'm not sure of the logistics. I
15 know we issued as a SAMI deal, so SAMI
16 would be the issuer.

17 Q. Right. So did you understand
18 that the first step in the process was to
19 transfer mortgages and the right, title and
20 interest in the mortgages to SAMI and then
21 SAMI would in turn transfer rights to the
22 trust and the trustee? Is that your
23 understanding of the economics of how these
24 deals took place?

25 A. I mean, quite frankly we bought